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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RODOLFO VALDIVIA,
SUSA CHA,
FRANCISCO CASTILLO ALCARAZ, and
HUGO RAFAEL GAYTAN LOPEZ,

Defendants

CASE NO. 1:20-CR-00235-JLT-SKO

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER

CURRENT DATE: August 3, 2022
TIME: 1:00 p.m.
COURT: Hon. Sheila K. Oberto

This case is set for status conference on August 3, 2022, for defendants RODOLFO VALDIVIA, SUSA CHA, FRANCISCO CASTILLO ALCARAZ, and HUGO RAFAEL GAYTAN LOPEZ. The parties seek to continue this matter to October 5, 2022.

On May 13, 2020, this Court issued General Order 618, which suspended all jury trials in the Eastern District of California until further notice and allows district judges to continue all criminal matters. Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020, . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will

1 impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and other
 2 General Orders were entered to address public health concerns related to COVID-19 (for example,
 3 General Order 614—recently extended by General Order 652).

4 Although the General Orders address the district-wide health concern, the Supreme Court has
 5 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 6 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 7 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 8 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 9 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 10 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 11 or in writing”).

12 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 13 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 14 justice continuances are excludable only if “the judge granted such continuance on the basis of his
 15 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 16 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 17 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 18 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 19 and the defendant in a speedy trial.” *Id.*

20 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 21 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 22 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 23 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 24 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 25 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 26 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 27 September 11, 2001, terrorist attacks and the resultant public emergency). The coronavirus is posing a
 28 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

1 In light of the societal context created by the foregoing, this Court should consider the following
2 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
3 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
4 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
5 pretrial continuance must be “specifically limited in time”).

6 **STIPULATION**

7 Plaintiff United States of America, by and through its counsel of record, and the Defendants, by
8 and through their counsel of record, Mr. Aed, Mr. Grantham, Mr. Torres, and Mr. Hawkins, hereby
9 stipulate as follows:

- 10 1. By previous order, this matter was set for status on August 3, 2022.
- 11 2. By this stipulation, defendants now move to continue the status conference until October
12 5, 2022, and to exclude time between August 3, 2022, and October 5, 2022, under Local Code T4.
- 13 3. While the parties anticipate that the case may resolve without a trial, this is not yet a
14 certainty. If defendants ultimately do not enter guilty pleas and decide to proceed to trial, the parties
15 agree and stipulate, and request that the Court find the following:
 - 16 a) The government asserts the discovery associated with this case includes reports,
17 photographs, and numerous recordings. Initial discovery has been provided to all counsel and
18 the government is currently processing additional discovery for production. The government is
19 aware of its ongoing discovery obligations.
 - 20 b) The government has extended plea offers to all defendants.
 - 21 c) Counsel for the defendants desire additional time to consult with their clients, to
22 review the current charges, to conduct investigation and research related to the charges, to review
23 and/or copy discovery for this matter, to discuss potential resolutions with their clients, to
24 prepare pretrial motions, and to otherwise prepare for trial.
 - 25 d) Counsel for defendants believe that failure to grant the above-requested
26 continuance would deny them the reasonable time necessary for effective preparation, taking into

27
28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
“additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
Cal. March 18, 2020).

account the exercise of due diligence.

e) The government does not object to the continuance.

f) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendants in a trial within the original date prescribed by the Speedy Trial Act.

g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of August 3, 2022, to October 5, 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4], because it results from a continuance granted by the Court at defendants' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: July 16, 2022

PHILLIP A. TALBERT
United States Attorney

/s/ JESSICA A. MASSEY
JESSICA A. MASSEY
Assistant United States Attorney

Dated: July 16, 2022

/s/ MICHAEL J. AED
MICHAEL J. AED
Counsel for Defendant
RODOLFO VALDIVIA

Dated: July 16, 2022

/s/ REED B. GRANTHAM
REED B. GRANTHAM
Counsel for Defendant
SUSA CHA

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1 Dated: July 16, 2022

/s/ DAVID A. TORRES
DAVID A. TORRES
Counsel for Defendant
FRANCISCO JAVIER CASTILLO
ALCARAZ

4 Dated: July 16, 2022

/s/ EARLY M. HAWKINS
EARLY M. HAWKINS
Counsel for Defendant
HUGO RAFAEL GAYTAN LOPEZ

7 **ORDER**

8
9 The parties shall be prepared to select a mutually agreeable trial date at the next status
10 conference.

11 IT IS SO ORDERED.

12
13 DATED: 7/20/2022

14 *Sheila K. Oberto*

THE HONORABLE SHEILA K. OBERTO
UNITED STATES DISTRICT JUDGE